



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2014-0222; FRL-9954-02-Region 6]

Approval and Promulgation of State Implementation Plans; Texas; Control of Air Emissions from Visible Emissions and Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Texas State Implementation Plan (SIP) submitted by the State of Texas that pertain to particulate matter standards and outdoor burning regulations. The State submitted the SIP revisions in the years 1989, 2004, 2006, and 2014. This rulemaking action is being taken under section 110 of the Federal Clean Air Act (CAA). The EPA has determined that the SIP revisions are approvable and meet the requirements established in section 110 of the CAA.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2014-0222, at <http://www.regulations.gov> or via email to pitre.randy@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is

considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Randy Pitre, (214) 665-7299, pitre.randy@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Randy Pitre, (214) 665-7299, pitre.randy@epa.gov. To inspect the hard copy materials, please schedule an appointment with Mr. Pitre or Mr. Bill Deese at 214-665-7253.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the EPA’s National Ambient Air Quality Standards (NAAQS). These NAAQS are established under section 109 of the CAA and they currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. The state’s air regulations are contained in its SIP, which is basically

a clean air plan. Each state is responsible for developing SIPs to demonstrate how the NAAQS will be achieved, maintained, and enforced. The SIP must be submitted to EPA for approval and any changes a state makes to the approved SIP also must be submitted to the EPA for approval.

II. The EPA's Evaluation

As detailed in the Technical Support Document (TSD) accompanying this action, the Texas Commission on Environmental Quality (TCEQ or "the State") submitted revisions to 30 Texas Administrative Code (TAC) Chapter 111, Subchapters 203, 209 and 211. The TCEQ also asked that we remove from the SIP a prior version of the now repealed rule (30 TAC Section 111.155) that we previously approved into the SIP as Rule 105.2, titled "Ground Level Concentrations" that limit ground level concentrations of particulate matter emissions in Texas. See 27 FR 10842 (May 31, 1972).

In the August 21, 1989 SIP submittal, the TCEQ repealed Rule 105.2 and adopted the newly renumbered 30 TAC Section 111.155 to replace it. In an October 28, 1999 (64 FR 57983) direct final rulemaking action, we proposed to approve the newly renumbered Section 111.155 into the Texas SIP. However, we received an adverse comment on inclusion of Section 111.155 (formerly 105.2) into the SIP. We therefore withdrew that October 28, 1999 action. See 64 FR 70592 (December 17, 1999). In our final action to that rulemaking, we stated that we were no longer taking action to approve Section 111.155 into the SIP. See 80 FR 19145 (April 28, 2009). Subsequently, the TCEQ adopted the repeal of Section 111.155 from their State rules. In the State's June 9, 2006 SIP submittal, the TCEQ asked EPA to remove from consideration a currently pending SIP request (the August 21, 1989, SIP submittal) to include 30 TAC Section 111.155 into the SIP. It also asked us to remove the former 105.2 rule from the SIP. Our analysis, available in our TSD in the rulemaking docket, finds that removal of Rule 105.2

(subsequently renumbered by the State as 111.155) is approvable. In 1971, EPA promulgated primary and secondary NAAQS for particulate matter (PM), measured as “total suspended particulate matter” or “TSP.” On July 1, 1987, (52 FR 24634) following the initial review of the standard, EPA announced its decision to replace TSP as the indicator for PM for ambient standards with particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀). The NAAQS for PM have been revised three times since 1987, the most recent of which was on December 14, 2012, when we revised the primary annual PM_{2.5} standard to 12.0 µg/ m³ and we retained the 24-hour PM_{2.5} standard of 35 µg/ m³ (78 FR 3086).¹ Rather than revising the SIP each time the NAAQS are revised, the Texas SIP at 30 TAC Section 101.21 provides enforcement of the NAAQS throughout Texas (see 42 FR 27894, June 1, 1977). Thus, removing 30 TAC Section 111.155 from the SIP would not result in any weakening of the SIP.

The State’s November 15, 2004 SIP submittal requests that EPA approve an amendment to 30 TAC Section 111.209, Exception for Disposal Fires, which allows the disposal of animal remains by veterinarians. Specifically, the November 15, 2004, SIP submittal revises 30 TAC Section 111.209(3) to authorize the use of outdoor burning of animal remains for veterinarians in accordance with Texas Occupations Code (TOC), Section 801.361, Disposal of Animal Remains. This revision to the State’s rules was necessary for TCEQ rules to be consistent with State law and to more precisely define when and where such animal remains could be burned by referencing the current state code of practice for veterinarians. The TOC, Section 801.361 addresses what can be burned (i.e., animal remains and the associated medical waste, but not

¹ See 62 FR 38652, July 18, 1997 and 71 FR 61144, October 17, 2006

sharp² and the circumstances of the specific veterinarian-client-patient case.³ Such burning is also subject to 30 TAC 111.219, General Requirements for Allowable Outdoor Burning, which addresses wind speeds, atmospheric temperature inversions, and other conditions, in an effort to protect, rather than adversely impact, air quality. We commented at the time of the State's public comment period that we had no objections to these revisions. We continue to believe that under section 110(l) of the CAA, such revisions will not interfere with attainment of the NAAQS, Reasonable Further Progress or any other applicable requirement of the CAA. Therefore, this revision is approvable.

The July 18, 2006, SIP submittal revises 30 TAC Section 111.203 to prohibit the burning of household refuse in a limited demographic area on lots of less than five acres, making it a Class C misdemeanor under Texas law if someone knowingly or intentionally burns in such an area. 30 TAC Section 111.209 was amended to make a distinction between allowable burning in areas of attainment and nonattainment, and to incorporate all currently SIP-approved controls at 30 TAC Section 111.219. Additional amended regulations were included in the July 18, 2006, SIP submittal which included regulations to require signs at designated specific residential properties for consolidated burning at the designated site, records to include the site description of a platted subdivision, to ensure that all waste was generated at specific residential properties for which the site is designated, and ensure that all burning at the designated site is directly supervised by an employee of a fire department who is part of the fire protection personnel, as defined by Texas Government Code, Section 419.021, and is acting in the scope of the person's employment, where the fire department employee shall notify the appropriate TCEQ regional

² Sharps are defined as needles, scalpels, or other articles that could cause wounds or punctures to personnel handling them. See <http://medical-dictionary.thefreedictionary.com/sharps>.

³ See TOC Section 801.361 at <http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.801.htm#801.361>.

office with a telephone or electronic facsimile notice 24 hours in advance of any scheduled supervised burn, and other advisory requirements including that TCEQ approval is not required.

The March 3, 2014 SIP submittal revises 30 TAC Section 111.211 to allow prescribed burns for the purpose of wildfire hazard mitigation. The submitted revision allows prescribed burning in other areas, such as where rural areas interface with urban areas, for the purpose of wildfire hazard mitigation in order to reduce the incidence, intensity, and spread of wildfires. The EPA submitted comments to the TCEQ during the State's public comment period. The State responded to our comments and those were included as part of the SIP submittal. We have reviewed the State's evaluation of our comments and agree that the revision is not allowing an additional activity with the addition of wildfire hazard mitigation, since the TCEQ already has the ability to allow prescribed burns for wildfire hazard mitigation purposes on a case by case basis. The purpose of the revision is to better facilitate the process of allowing prescribed burns for wildfire hazard mitigation and thereby reduce the chance of emissions of pollutants that could be emitted in an uncontrolled wildfire. Our analysis, available in our TSD in the rulemaking docket, finds that the revisions to 30 TAC Section 111.211 are not significant, are approvable and would not interfere with attainment of the NAAQS or prevent any reasonable further progress in obtaining the NAAQS or any other applicable requirement of the CAA.

III. Proposed Action

We are proposing to approve the Texas SIP revisions dated from 1989, 2004, 2006 and 2014. Specifically, we are proposing to approve the August 21, 1989 and the June 9, 2006 submittals that repealed the Rule 105.2 (subsequently renumbered 30 TAC Section 111.155). We are proposing to approve the November 15, 2004, submittal that revises 30 TAC Section 111.209. We are proposing to approve the July 18, 2006, submittal that adopted amendments to

30 TAC Section 111.203 and 30 TAC Section 111.209 that revises 30 TAC Subchapter B “Emissions Limits.” We are also proposing to approve the March 3, 2014, submittal that adopted amendments to 30 TAC Section 111.211 with revisions to Subchapter B.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate Matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 21, 2016.

Ron Curry,
Regional Administrator, Region 6.

[FR Doc. 2016-25983 Filed: 10/26/2016 8:45 am; Publication Date: 10/27/2016]